

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
)
Request for Review by)
)
CONNECT2 INTERNET NETWORKS, INC.)
)
of Decision of Universal Service)
Administrator)

CC Docket No. 02-06
471 Application No. 181005
Funding Request Nos. 369258
369289
417057

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Federal Communications Commission
Office of Secretary

REQUEST FOR REVIEW

Connect2 Internet Networks, Inc. ("Connect2"), by counsel and pursuant to Sections 54.719 and 54.721 of the Commission's Rules, hereby requests review of the Universal Service Administrative Company's Decision on Appeal, dated December 15, 2004 ("USAC Decision"), which denied in full Connect2's appeal of two "Commitment Adjustment Letters" dated June 7, 2004 ("CALs") issued by the Schools and Libraries Division's ("SLD").¹ The CALs purport to rescind a total of \$491,447.28 in funds committed by USAC pursuant to the above-referenced funding requests for Funding Year 2000 ("FY 2000") for internal connections and internet access at Children's Store Front School.² Because complete rescission of the committed funds is neither required nor warranted under the circumstances presented

¹ Copies of the CALs and the USAC Decision are annexed as Exhibit 1.

² Children's Store Front School is an independent, tuition free school located in the Harlem section of New York City serving students from pre-kindergarten through the 8th grade. See Federal Communications Commission, Office of Inspector General, "Report on Audit of the E-Rate Program at Childrens Storefront School," Report No. 02-AUD-02-04-025, dated April 5, 2004 ("OIG Audit") at 2. A copy of the Audit Report is annexed as Exhibit 2. Also included in Exhibit 2 are related memoranda: (a) from the Chief of the Wireline Competition Bureau to the Inspector General dated March 30, 2004 ("Maher Memo"); (b) from the Managing Director to the Inspector General dated April 1, 2004; and (c) from the Inspector General to the Chairman dated April 5, 2004 ("Feaster Memo").

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At a minimum, the Commission should suspend all activity with respect to the CALs pending the outcome of two notice and comment proceedings currently being conducted by the Commission because those proceedings are directly relevant to the CALs at issue here.

Background

By two letters dated June 7, 2004, SLD sought to inform Connect2 that SLD had discovered “certain applications where funds were committed in violation of program rules” of the Schools and Libraries Universal Service Program with respect to equipment and services installed by Connect2 at Children’s Store Front School. See CALs at 1. The CALs state that “during an audit” conducted by unidentified persons at an unspecified time at Children’s Store Front School, the school was unable “to demonstrate that a competitive bidding process had occurred and that they had paid their non-discounted portion for the services delivered.” Id. at 4. The CALs also contend that the school was “unable to demonstrate that the internet access service was delivered within the funding year.” As a result of these “violations of the rules of the Schools and Libraries Support Mechanism,” the CALs state that “the commitment has been rescinded in full” and that “USAC will have to recover some or all of the funds disbursed.” Id. at 1, 4.³ However, the Feaster memo accompanying the OIG Audit Report clearly states that “the primary factor in our recommendation for 100% recovery [of the committed funds] is that Children’s did not pay their non-discounted portion of the costs.” See Feaster Memo at 1. Together, the CALs “rescind in full” funding commitments totaling nearly \$500,000 -- years after the committed funds were spent to install equipment and services at Children’s Store Front School.

Inspector General dated April 1, 2004; and (c) from the Inspector General to the Chairman dated April 5, 2004 (“Feaster Memo”).

³ The CALs do not state whether USAC intends to recover the funds from the school, Connect2 or both. To the extent that USAC attempts in the future to recover any of these funds from Connect2, Connect2 reserves the right to supplement this petition or to file an additional petition to address such recovery efforts.

Each CAL was addressed to “Mr. John Angelides, Connect2 Internet Networks, Inc., 26 Bay Street, Staten Island, New York.” When they sent the CALs to Mr. Angelides at the address set forth above, SLD and USAC knew or should have known that: (a) Connect2’s involvement in the E-Rate Program at Children’s Store Front School and other schools in New York and New Jersey already had been the subject of a criminal prosecution by the United States Department of Justice (in which USAC and the Commission had cooperated); (b) the criminal prosecution had resulted in a plea agreement with Mr. Angelides which included a civil forfeiture of \$290,000 representing “the approximate amount of the proceeds obtained as a result of the offense;”⁴ and (c) Mr. Angelides had been debarred in 2003 from all activities relating to the schools and libraries program.⁵ Despite Mr. Angelides’ debarment six months earlier, the CALs addressed to him stated that SLD was “also sending this information to applicant, so that you may work with them to implement this decision.” Id.

The audit that is referenced in and forms the basis for the CALs apparently was completed in April 2004 and was one of approximately 14 audits of E-Rate Program beneficiaries conducted by OIG. However, the OIG Audit Report was never served upon or otherwise provided to Connect2 until November 23, 2004 -- months after the deadline for filing Connect2’s appeal of the CALs had passed. After failing to provide Connect2 with the OIG Audit Report that formed the basis for the CALs, USAC then denied Connect2’s appeal, stating

⁴ The history of the criminal prosecution and USAC’s involvement in that prosecution, as well as the details of the plea agreement, are set forth in five petitions filed by Connect2 in December 2004 which now are the subject of an ongoing notice and comment proceeding. See Consolidated Pleading Cycle Established for Connect2 Internet Network, Inc. Appeals of Fund Recovery Decisions of the Universal Service Administrator, Public Notice, DA 05-146, CC Docket No. 02-6 (Jan. 21, 2005) (“Connect2 Public Notice”).

⁵ On December 23, 2003, Mr. Angelides was debarred by the Commission and was expressly prohibited from engaging in any activities “associated with or related to the schools and libraries support mechanism, including the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.” See Notice of Debarment, DA 03-4088, 18 FCC Rcd 26722 (Dec. 23, 2003) (“Angelides Debarment Notice”).

that Connect2 “has not brought forward persuasive information that SLD’s decision to rescind the commitment for the Children’s Store Front School was incorrect” based on the school’s failure to pay its non-discounted share of the costs, and “because 30% or more of the products and/or services for which you have requested funding were not delivered within the funding year.” See USAC Decision at 2-3.

However, after the USAC Decision was issued, the Commission initiated two notice and comment proceedings that bear directly upon the matters at issue in the CALs. First, in response to petitions filed by Sprint and BellSouth seeking reconsideration of the Commission’s decision in Schools and Libraries Universal Service Support Mechanism, Fifth Report and Order, FCC 04-190, 19 FCC Rcd. 15808 (2004) (“Schools and Libraries Fifth R&O”), the Commission has issued a Public Notice seeking comment on, among other issues: (a) when a school must pay its non-discounted share of the costs; and (b) whether failure to make timely payment of the non-discounted portion of the costs should result in rescission and recovery of all funds committed by USAC for that school. See Pleading Cycle Established for Comment on Petition for Reconsideration of Requirements Established in the Schools and Libraries Fifth Report and Order, Public Notice, DA 05-103, FCC 04-190 (Jan. 18, 2005) (“Sprint/BellSouth Notice”). Second, the Commission also issued a Public Notice seeking comment on a number of issues raised in five petitions filed by Connect2 in December 2004, including due process and fundamental fairness issues arising from USAC’s failure to serve Connect2 with audit reports that form the basis for these and other CALs, as well as substantial recovery demands asserted against Connect2, until months after the purported deadline for appealing the CALs had passed. See Consolidated Pleading Cycle Established for Connect2 Internet Network, Inc. Appeals of Fund Recovery Decisions of the Universal Service

Administrator, Public Notice, DA 05-146, CC Docket No. 02-6 (Jan. 21, 2005) (“Connect2 Public Notice”).

Connect2 respectfully submits that the two notice and comment proceedings demonstrate that USAC overstepped its authority when it “rescinded in full” the entire funding commitment for Children’s Store Front School in the June 2004 CALs and failed to provide Connect2 with the OIG Audit Report that formed the basis for that decision until months after Connect2’s appeal of the CALs had been filed. As a result, the Commission should grant this petition, reverse the USAC Decision and rescind the CALs at issue here, which are arbitrary, capricious, and inconsistent with the overall objectives of the Schools and Libraries Program in any event. At a minimum, the Commission should suspend all activity relating to these CALs pending the outcome of the Sprint/BellSouth and Connect2 notice and comment proceedings.

I. The Commission Should Rescind the CALs Pending Resolution of the Issues Raised in Sprint/BellSouth Public Notice

The Feaster Memo accompanying the OIG Audit Report clearly states that “the primary factor in our recommendation for 100% recovery [of the committed funds] is that Children’s did not pay their non-discounted portion of the costs.” See Feaster Memo at 1. However, at the time that the CALs were issued, the Commission had not yet determined what action should be taken in such situations. The Commission did not conclude for the first time that “*all funds* disbursed should be recovered for any funding requests in which the beneficiary failed to pay its non-discounted share” until August 2004 -- two months after the CALs had been issued to Connect2. See Schools and Libraries Fifth R&O, at ¶24 (emphasis added). In the Fifth R&O, the Commission also set a 90-day timeframe in which applicants must pay their non-discounted portions to service providers, acknowledging that prior to August 2004, its

rules did not “set forth a specific timeframe for determining when a beneficiary has failed to pay its non-discounted share.” Id. Although the CALs contend that complete rescission of the funding commitments and recovery of 100% of the funds disbursed is required because of the school’s failure to pay, the Schools and Libraries Fifth R&O clearly demonstrates that the school’s failure to pay as of June 2004 was not a violation of any Commission rule in existence at the time the CALs were issued.

These same issues currently are the subject of notice and comment proceedings before the Commission. In the Sprint/BellSouth Public Notice, the Commission has requested comment on Sprint and BellSouth’s petition for reconsideration of: (a) the Commission’s imposition -- without notice or comment -- of a 90-day period within which the school must pay its non-discounted share of the costs of equipment and services provided; and (b) the determination that the school’s failure to make timely payment of its non-discounted share in all cases warrants full rescission of all committed funds and recovery of those funds. The CALs at issue here clearly jumped the gun on these issues by rescinding in full all of the funds committed to Children’s Store Front School based primarily on the school’s failure to pay its non-discounted share of the costs as of June 7, 2004. Until the Commission decides these issues on reconsideration in response to the Sprint/BellSouth petition, any adjustment of the funding commitment would be premature -- particularly an “adjustment” that rescinds the commitment entirely years after the committed funds were used to provide equipment and services to the school.

II. Connect2 Has Been Denied Due Process With Respect To The SLD Claims

Connect2's activities with respect to the E-Rate Program at Children's Store Front School were the specific subject of a criminal proceeding and plea agreement.⁶ Connect2 incorporates by reference the arguments raised in its previous petitions regarding the criminal proceedings, the role of USAC and the Commission in those proceedings, and the effect of the plea agreement. In addition, Connect2 was denied due process with respect to the CALs at issue here because USAC did not provide the OIG Audit Report to Connect2 until months after its appeal of the CALs was filed. As a result, Connect2 was never afforded an opportunity to review the audit findings before filing its appeal.

The CALs are based in part on the auditors' claims that Children's Store Front School "was unable to demonstrate that the recurring maintenance charges were delivered within the funding year" and also "was unable to demonstrate that the internet access service was delivered within the funding year." *Id.*⁷ The OIG Audit Report indicates that the school was unable to produce "documentation" sought by the auditors to show that the internet and maintenance services were provided within the relevant funding year.⁸ However, the Wireline Competition Bureau's response to the Audit Report notes that "there is no specific rule requiring beneficiaries or service providers to maintain documentation that would demonstrate that service was in fact provided" and that "the Commission has sought comment on whether

⁶ Children's Store Front School was one of the schools specifically mentioned in the criminal Complaint and Information. See Connect2 Internet Networks, Inc., Request for Review, CC Docket 02-6, filed Dec. 13, 2004; See also, Connect2 Internet 2 Networks, Inc. Consolidated Request for Review and Petition for Waiver, CC Docket No. 02-6, filed Dec. 27, 2004.

⁷ The CAL provides no other information about the audit. However, the USAC Decision states that the audit "was conducted by the FCC's Office of Inspector General ("OIG") at Children's Store Front School." USAC Decision at 2.

⁸ Connect2's own records regarding Children's Store Front School were seized by the FBI on December 18, 2002 and have never been returned. See Connect2 Internet Networks, Inc., Request for Review, CC Docket 02-6, filed Dec. 13, 2004; See also, Connect2 Internet 2 Networks, Inc. Consolidated Request for Review and Petition for Waiver, CC Docket No. 02-6, filed Dec. 27, 2004.

program participants should be required to retain records demonstrating rule compliance for a period of five years.” See Maher Memo at 3. Even though the Bureau acknowledged that no rule existed requiring beneficiaries or service providers to maintain those records, the CALs “rescinded in full” the funding commitment based in part on the school’s failure to produce them.

At a minimum, Connect2 should have been provided a copy of the OIG Audit Report when the CALs were issued, so that it might have an opportunity to address those issues on appeal. Instead, USAC failed to provide Connect2 with a copy of the Audit Report upon which the CALs are based until November 23, 2004, months **after** Connect2’s appeals of the CALs were filed. Copies of the Feaster Memo and the Audit Report apparently were provided to USAC, the Chief of the Wireline Competition Bureau and the principal of Children’s Store Front School before the CALs were sent to Connect2, but no copy was provided to Connect2. Consequently, Connect2 was never afforded a timely opportunity to rebut the findings contained in that report. See Feaster Memo, annexed as part of Exhibit 2.

III. Full Rescission of the Funding Commitment Is Excessive, Inequitable and Arbitrary.

The CALs rescind in full all funds committed by USAC for Children’s Store Front School -- a total of nearly \$500,000 -- years after those funds were spent to provide equipment and services to the school. USAC rescinded the funding commitment, and apparently will seek recovery of the entire amount from the school, Connect2, or both, ***primarily*** because the school failed to pay its non-discounted share, which amounts to only a small fraction of the total funds that USAC is seeking to recover. USAC’s complete rescission of the funding commitment is excessive, inequitable and ultimately contrary to the overall objective of the statute.

The Commission contends that it is required by statute and applicable Supreme Court precedent to recover all funds disbursed by USAC in violation of Section 254 of the Communications Act. See, e.g., Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board On Universal Service, CC Docket Nos. 97-21 and 96-45, Order, FCC 99-291 (1999) at ¶7; Federal-State Joint Board On Universal Service, Order on Reconsideration and Fourth Report and Order, CC Docket Nos. 96-45, 97-21 and 02-6, FCC 04-181 (July 2004) at ¶¶3-5. Even assuming that the statutes and precedents cited by the Commission apply to the Universal Service Fund, which is collected, maintained and disbursed by USAC and is not intermingled with general Treasury funds, the CALs at issue here apparently are based on alleged violations of “the rules of the Schools and Libraries Support Mechanism,” not violations of the statute. Although USAC contends that the school did not pay in full its share of the cost of the equipment and services installed by Connect2, Connect2 is unaware of any claim that the funds disbursed were not used by Connect2 in a manner consistent with the statute -- i.e. to provide “services to elementary schools, secondary schools and libraries for educational purposes at rates less than the amounts charged for similar services to other parties.” See 47 U.S.C. §254(h)(1)(B). The authorities cited by the Commission as the basis for its recovery obligations do not require complete rescission of all funding commitments and recovery of all disbursed amounts that actually were used to provide eligible equipment and services to the school solely because the school did not pay the full amount of its non-discounted share in a timely fashion.

Conclusion

For the reasons set forth above, Connect2 respectfully requests the Commission to reverse the USAC Decision denying its appeal of the CALs and to rescind the CALs. At a minimum, any further action with respect to the CALs should be suspended pending the

outcome of the notice and comment proceedings initiated in response to the Sprint/BellSouth and Connect2 petitions.

Date: February 14, 2005

Respectfully submitted,

CARTER LEDYARD & MILBURN LLP

By: Timothy J. Fitzgibbon *TFB*
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Jennifer M. Wagman, Esquire
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*Counsel for Connect2
Internet Networks, Inc.*

CERTIFICATE OF SERVICE

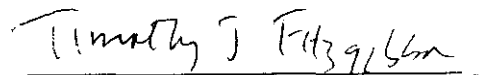
I hereby certify that on February 14, 2004, a copy of the foregoing "Request for Review" and certificate of service was sent via First Class Mail, postage prepaid, to:

Administrator
Universal Service Administrative
Company
Schools and Libraries Division
Box 125 - Correspondence Unit
80 South Jefferson Road
Whippany, New Jersey 07981

Ms. Narda M. Jones
Chief, Telecommunication Commission
Wireline Competition Bureau
Federal Communication Commission
445 12th Street, S.W.
Washington, D.C. 20554

Mr. Anthony Dale
Deputy Chief
Federal Communication Commission
445 12th Street, S.W.
Washington, D.C. 20554

Children's Store Front School
461 W. 131st Street
New York, New York 10027


Timothy J. Fitzgibbon TFB



Universal Service Administrative Company
Schools & Libraries Division

COMMITMENT ADJUSTMENT LETTER

June 7, 2004

John Angelides
Connect2 Internet Networks Inc.
26 Bay Street
Staten Island, NY 10301

Re: COMMITMENT ADJUSTMENT

Funding Year 2000 -2001

Form 471 Application Number: 181005

Applicant Name CHILDREN'S STORE FRONT SCHOOL

Contact Person: John Dotson

Contact Phone: 212-926-0771

Dear Service Provider Contact:

Our routine reviews of Schools and Libraries Program funding commitments revealed certain applications where funds were committed in violation of program rules.

In order to be sure that no funds are used in violation of program rules, SLD must now adjust these funding commitments. The purpose of this letter is to inform you of the adjustments to these funding commitments required by program rules.

FUNDING COMMITMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Report for the Form 471 application cited above. The enclosed report includes a list of the FRNs from the application for which adjustments are necessary. The SLD is also sending this information to applicant, so that you may work with them to implement this decision. Immediately preceding the Funding Commitment Report, you will find a guide that defines each line of the Report.

Please note that if the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the funds disbursed. The amount is shown as Funds to be Recovered. We expect to send you a letter describing the process for recovering these funds in the near future, and we will send a copy of the letter to the applicant. If the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount.

TO APPEAL THIS DECISION:

If you wish to appeal the Funding Commitment Decision indicated in this letter, your appeal must be POSTMARKED within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify which Commitment Adjustment Letter you are appealing. Your letter of appeal must include the Billed Entity Name, the Form 471 Application Number, and the Billed Entity Number from the top of your letter.
3. When explaining your appeal, copy the language or text from the Commitment Adjustment Letter that is at the heart of your appeal to allow the SLD to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125- Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We encourage the use of either the e-mail or fax filing options.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket Nos. on the first page of your appeal to the FCC. Your appeal must be POSTMARKED within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site, or by contacting the Client Service Bureau. We strongly recommend that you use either the e-mail or fax filing options.

A GUIDE TO THE FUNDING COMMITMENT REPORT

Attached to this letter will be a report for each funding request from your application for which a commitment adjustment is required. We are providing the following definitions.

- **FUNDING REQUEST NUMBER (FRN):** A Funding Request Number is assigned by the SLD to each request in Block 5 of your Form 471 once an application has been processed. This number is used to report to applicants and service providers the status of individual discount funding requests submitted on a Form 471.
- **SPIN (Service Provider Identification Number):** A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support programs.
- **SERVICE PROVIDER:** The legal name of the service provider.
- **CONTRACT NUMBER:** The number of the contract between the eligible party and the service provider. This will be present only if a contract number was provided on Form 471.
- **SERVICES ORDERED:** The type of service ordered from the service provider, as shown on Form 471.
- **SITE IDENTIFIER:** The Entity Number listed in Form 471 for “site specific” FRNs.
- **BILLING ACCOUNT NUMBER:** The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on your Form 471.
- **ADJUSTED FUNDING COMMITMENT:** This represents the adjusted total amount of funding that SLD has committed to this FRN. If this amount exceeds the Funds Disbursed to Date, the SLD will continue to process properly filed invoices up to the new commitment amount.
- **FUNDS DISBURSED TO DATE:** This represents the total funds which have been paid up to now to the identified service provider for this FRN.
- **FUNDS TO BE RECOVERED:** This represents the amount of Funds Disbursed to Date that exceed the Adjusted Funding Commitment amount. These funds will have to be recovered. If the Funds Disbursed to Date do not exceed the Adjusted Funding Commitment amount, this entry will be \$0.
- **FUNDING COMMITMENT ADJUSTMENT EXPLANATION:** This entry provides a description of the reason the adjustment was made.

Funding Commitment Report for Application Number: 181005

Funding Request Number 417057 SPIN: 143007419
Service Provider: Connect2 Internet Networks Inc.
Contract Number: 1500
Services Ordered: INTERNAL CONNECTIONS
Site Identifier: 208919 THE CHILDREN'S STOREFRONT
Billing Account Number:
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$94,282.00
Funds to be Recovered: \$94,282.00

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that the commitment must be rescinded in full. During an audit, the applicant was asked to demonstrate that a competitive bidding process had occurred and that they had paid their non-discounted portion for the services delivered. The applicant was unable to demonstrate that a competitive bidding process had occurred or that they had paid their non-discounted share. These findings are violations of the rules of the Schools and Libraries Support Mechanism. Accordingly, the commitment has been rescinded in full.

Funding Request Number 417137 SPIN: 143007419
Service Provider: Connect2 Internet Networks Inc.
Contract Number: 1532
Services Ordered: INTERNAL CONNECTIONS
Site Identifier: 208919 THE CHILDREN'S STOREFRONT
Billing Account Number:
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$95,506.20
Funds to be Recovered: \$95,506.20

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that the commitment must be rescinded in full. During an audit, the applicant was asked to demonstrate that a competitive bidding process had occurred and that they had paid their non-discounted portion for the services delivered. The applicant was unable to demonstrate that a competitive bidding process had occurred or that they had paid their non-discounted share. These findings are violations of the rules of the Schools and Libraries Support Mechanism. Accordingly, the commitment has been rescinded in full.



Universal Service Administrative Company
Schools & Libraries Division

COMMITMENT ADJUSTMENT LETTER

June 7, 2004

John Angelides
Connect2 Internet Networks Inc.
26 Bay Street
Staten Island, NY 10301

Re: COMMITMENT ADJUSTMENT

Funding Year 2000 -2001

Form 471 Application Number: 181005

Applicant Name CHILDREN'S STORE FRONT SCHOOL

Contact Person: John Dotson

Contact Phone: 212-926-0771

Dear Service Provider Contact:

Our routine reviews of Schools and Libraries Program funding commitments revealed certain applications where funds were committed in violation of program rules.

In order to be sure that no funds are used in violation of program rules, SLD must now adjust these funding commitments. The purpose of this letter is to inform you of the adjustments to these funding commitments required by program rules.

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- **SERVICE PROVIDER:** The legal name of the service provider.
- **CONTRACT NUMBER:** The number of the contract between the eligible party and the service provider. This will be present only if a contract number was provided on Form 471.
- **SERVICES ORDERED:** The type of service ordered from the service provider, as shown on Form 471.
- **SITE IDENTIFIER:** The Entity Number listed in Form 471 for "site specific" FRNs.
- **BILLING ACCOUNT NUMBER:** The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on your Form 471.
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- **FUNDING COMMITMENT ADJUSTMENT EXPLANATION:** This entry provides a description of the reason the adjustment was made.

Funding Commitment Report for Application Number: 181005

Funding Request Number 369258 SPIN: 143007419
Service Provider: Connect2 Internet Networks Inc.
Contract Number: 1497
Services Ordered: INTERNET ACCESS
Site Identifier: 208919 THE CHILDREN'S STOREFRONT
Billing Account Number:

Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$20,412.00
Funds to be Recovered: \$20,412.00

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that the commitment must be rescinded in full. During an audit, the applicant was asked to demonstrate that a competitive bidding process had occurred and that they had paid their non-discounted portion for the services delivered. The applicant was unable to demonstrate that a competitive bidding process had occurred or that they had paid their non-discounted share. Additionally, the applicant was unable to demonstrate that the internet access service was delivered within the funding year. These findings are violations of the rules of the Schools and Libraries Support Mechanism. Accordingly, the commitment has been rescinded in full.

Funding Request Number 369289 SPIN: 143007419
Service Provider: Connect2 Internet Networks Inc.
Contract Number: 1497
Services Ordered: INTERNAL CONNECTIONS
Site Identifier: 208919 THE CHILDREN'S STOREFRONT
Billing Account Number:

Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$281,247.08
Funds to be Recovered: \$281,247.08

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that the commitment must be rescinded in full. During an audit, the applicant was asked to demonstrate that a competitive bidding process had occurred and that they had paid their non-discounted portion for the services delivered. The applicant was unable to demonstrate that a competitive bidding process had occurred or that they had paid their non-discounted share. Additionally, the applicant was unable to demonstrate that the recurring maintenance charges were delivered within the funding year. These findings are violations of the rules of the Schools and Libraries Support Mechanism. Accordingly, the commitment has been rescinded in full.



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2000-2001

December 15, 2004

Mark S. Cohen
Cohen & Gresser LLP
666 Fifth Avenue, 26th Floor
New York, NY 10103

RECEIVED

DEC 16 2004

Re: Children's Store Front School

COHEN & GRESSER LLP

Re: Billed Entity Number: 208919
471 Application Number: 181005
Funding Request Number(s): 369258, 369289, 417057, 417137
Your Correspondence Dated: July 20, 2004

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Funding Year 2000 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 369258, 369289, 417057, 417137
Decision on Appeal: **Denied in full**
Explanation:

- You state that you are appealing on behalf of Connect2 Internet Networks Inc. On appeal you are addressing multiple Commitment Adjustment Letters to multiple entities. You assert the reason for repayment requests vary by entity. You also affirm that Mr. Angelides of Connect2 pled guilty on May 22, 2003 to 18 U.S.C. §371, during which he agreed to forfeit \$290,000. In light of the criminal prosecution of Mr. Angelides, his illness, and attendant business problems, Connect2 has not transacted any business since 2003 when it closed its office. The funds received by Connect2 from the SLD, which SLD now wants repaid, went largely to the purchase and installation of computer equipment. The funds were also used to pay the company's employees, vendors and other overhead; therefore, in light of the aforementioned circumstances, further proceedings are unwarranted.

- The audit conducted on the Children's Store Front School showed that (1) the school failed to demonstrate that a competitive bidding process was followed and (2) that the applicant failed to pay their non-discounted portion of the E-rate services. On the FCC Form 471 Services Ordered and Certification Form, Block 6, item 22, Children's Store Front School certified that it would pay its non-discounted portion. Additionally, the auditors determined that there was no evidence of the requested services being delivered during the funding year. These findings are in violation of the rules of the Schools and Libraries Support Mechanism. Accordingly, the SLD must seek recovery of \$491,447.28 in total. Your appeal has not brought forward persuasive information that the SLD's decision to rescind the commitment for the Children's Store Front School was incorrect.
- FCC rules require applicants to certify that, at the time they submit the FCC Form 471, they have secured access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the products and/or services purchased as well as to pay the non-discounted charges for eligible products and/or services. 47 C.F.R. § 54.504(b); FCC Form 471, Block 6 Item 22. SLD reviews this certification by conducting a "necessary resources" review. The FCC has emphasized the importance of conducting this review to protect the integrity of the schools and libraries support mechanism. *Request for Review by New Orleans Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd. 16,653, DA 01-2097 (rel. Sep. 18, 2001). This rule requires the applicant to pay its service provider the full cost of the non-discounted portion owed to the service provider from the funds budgeted within that funding year.
- On the FCC Form 473 (Service Provider Certification Form), the service provider certifies that charges reflected on the FCC Form 474 (Service Provider Invoice Form) will be based on bills or invoices billed to the beneficiary. Moreover, instructions for the Form 474 require that the service provider has to provide the products and services and bill the school or library for the non-discounted portion prior to submitting a FCC Form 473 to USAC/SLD. In addition, the FCC Rules in Sec. 54.507(b) states that a Funding Year for purposes of the schools and libraries cap shall be the period July 1 through June 30; Section 54.70(e) states that if schools and libraries enter into long term contracts for eligible services, the Administrator (USAC/SLD) shall only commit funds to cover the pro-rated portion of such long term contract scheduled to be delivered during the funding year for which universal service support is sought.
- FCC rules require that the products and/or services for which discounts are approved be delivered within the current funding year. 47 C.F.R. § 54.507(d). Funding Year 2000, the period for which you requested funding in your Form 471, runs from July 1, 2000 to June 30, 2001. FCC rules require that more than 70% of the funds requested must be for products and/or services that will be

delivered during the current funding year. 47 C.F.R. § 54.504(c)(1). If 30% or more of the funds requested are for products and/or services that will not be delivered during the current funding year, the request will be denied. The evidence indicates that 30% or more of the products and/or services for which you requested funding in your Form 471 was not delivered within this time period. You did not demonstrate otherwise in your appeal. Consequently, SLD denies your appeal because 30% or more of the products and/or services for which you have requested funding were not delivered within the funding year.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the Federal Communications Commission (FCC). For appeals that have been denied in full, partially approved, dismissed, or cancelled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: John Dotson
Children's Store Front School
461 W. 131st Street
New York, NY 10027

